

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 38

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD J. POKORNY

Appeal No. 95-4934
Application 07/908,650¹

ON BRIEF

Before GARRIS, PAK and WARREN, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed July 2, 1992. According to appellant, this application is a continuation of Application 07/694,448 filed May 1, 1991, now abandoned, which is a reexamination of U.S. Patent No. 4,927,556 issued May 22, 1990, based on Application 07/260,172 filed October 20, 1988, which is a continuation-in-part of Application 07/164,231 filed March 18, 1988, now abandoned, which is a continuation-in-part of Application 07/058,162 filed June 4, 1987, now abandoned.

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This is a decision on an appeal which involves claims 10, 11 and 15 through 19. The only other claims in the application, which are claims 1 through 9 and 12 through 14, have been determined by the examiner to be allowable.

The subject matter on appeal relates to a method of removing an organic coating from a substrate via a composition consisting essentially of (1) from about 10 percent by weight to about 45 percent by weight of at least one dibasic ester, (2) from about 55 percent by weight to about 90 percent by weight water, and (3) at least one thickening agent in an amount sufficient to form a stable emulsion. The appealed subject matter also relates to a stable thixotropic emulsion composition having the aforementioned ingredients. This subject matter is adequately illustrated by independent claims 10 and 15 which read as follows:

10. Method of removing an organic coating from a substrate comprising the steps of:

(a) providing a composition consisting essentially of (1) from about 10 percent by weight to about 45 percent by weight of at least one dibasic ester, (2) from about 55 percent by weight to about 90 percent by weight water, and (3) at least one thickening agent selected from the group consisting of water soluble and water swellable thickening agents, and mixtures thereof, in an amount sufficient to form a stable emulsion;

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(b) applying said composition to a substrate bearing an organic coating;

(c) allowing said composition to remain on said substrate for a sufficient period of time to loosen said coating; and

(d) removing said coating from said substrate.

15. A thixotropic emulsion composition consisting essentially of:

(1) from about 10 percent by weight to about 45 percent by weight of at least one dibasic ester;

(2) from about 55 percent by weight to about 90 percent by weight water; and

(3) at least one thickening agent selected from the group consisting of water soluble and water swellable thickening agents in an amount sufficient to form a stable thixotropic emulsion having the ability to cling to vertical surfaces.

The references relied upon by the examiner as evidence of obviousness are:

Hodson 1984	4,445,939	May 1,
Jackson 1988	4,780,235	Oct. 25,
Japanese patent 1982 (Horibe)	57-83598	May 25,

Claims 10 and 11 are rejected under 35 U.S.C. § 103 as being unpatentable over Horibe in view of Jackson, and claims

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15 through 19 are correspondingly rejected over Horibe in view of Jackson or Hodson².

We refer to the several briefs and answers of record for a complete exposition of the opposing viewpoints expressed by the appellant and the examiner concerning the above noted rejections.

These rejections will be sustained for the reasons well stated by the examiner in her principle and supplemental answers which reasons we expressly adopt as our own. We add the following comments for emphasis and completeness.

The pivotal issue on this appeal is whether the Example 3 composition of Horibe constitutes an emulsion which is stable as required by the claims on appeal. It is axiomatic that, in proceedings before the Patent and Trademark Office, claims in an application are to be given their broadest reasonable interpretation consistent with the specification and that claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir.

² The appealed claims will stand or fall together; see page 3 of the brief and page 2 of the answer.

1988). When so interpreted, the claims under rejection encompass as a "stable" emulsion pursuant to claims 10 and 15 an emulsion of the type formed by Horibe's Example 3 composition even though this Example 3 emulsion is temporary rather than permanent. We will not further burden the record of this application by reiterating the logical rationale well expressed by the examiner in support of this view.

It is appropriate, however, to comment upon the appellant's apparent belief that the claim term "stable" should be interpreted as meaning "not changing or fluctuating" (brief, page 12). Such an interpretation would be, not only inconsistent with but, actually controverted by the appellant's specification disclosure. As correctly indicated by the examiner, the disclosure at lines 13 through 16 in column 3 of the subject specification reflects that a stable emulsion is one which is capable of being re-emulsified³. Pursuant to this disclosure, an emulsion should be considered stable even though it might separate and require re-

³ As also correctly indicated by the examiner, the appellant's tests reflect that the emulsion formed by Horibe's Example 3 possesses this capability.

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emulsification (and thus could not be regarded as "not changing or fluctuating"). Additionally, the disclosure at lines 33 through 64 in column 7 of the specification unambiguously teaches that the emulsions formed by the here claimed compositions are incapable of being accurately described as "not changing or fluctuating." On the contrary, it is quite clear that these emulsions separate under certain conditions (e.g., cooling to 15°C) particularly at water concentrations at the low end of the here claimed range (i.e., "about 55 percent").

The decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

BRADLEY R. GARRIS)

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Administrative Patent Judge)	
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CHUNG K. PAK) BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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Administrative Patent Judge)	

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